MGJ

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 1033 of 2002

The State of Maharashtra ..Appellant
(Org.Complainant)

vs.

Vijay Khandu Bhalerao
Age 26 years, Occ: nil
resident of Tadiwala Road
Zopadpatti, Pune and upper
Indira Nagar, above Anand
Traders, Sukhsagar Nagar
above Anand Traders,
Sukhsagar Nagar, Pune ..Respondent
(Orig.Accused)

Smt.V.R.Bhosale, A.P.P. for appellant

CORAM: S.B.MHASE &
Smt.NISHITA MHATRE JJ.
8th March 2007

ORAL JUDGMENT:(Per S.B.Mhase J.)

1. Heard.

2. This is an appeal by State of Maharashtra challenging the judgment and order passed by the Special Judge under the Maharashtra Control of Organized Crimes Act,1999 on 26th June, 2002 in Special Case No.5 of 2001. The respondent/accused was found to be guilty of offence under sec.394 and 427 of Indian Penal Code and was sentenced to suffer R.I. for 3 years and to pay a fine of Rs.1000/- in

default to suffer R.I. for six months on account of offence punishable under sec.394 of I.P.C. and he is further sentenced to suffer R.I. for six months and to pay a fine of Rs.200/- i/d to suffer R.I. for one month for the offence punishable under sec.427 of Indian Penal Code. During the pendency of this appeal respondent/accused has undergone the sentence for conviction under sec.394 and 427 of I.P.C. as stated above and he has been set at liberty by the said authorities. By the said judgment, the respondent/accused was acquitted of an offences punishable under sec.506(2) of Indian Penal Code, under sec.4 read with 25 of the Indian Arms Act and sections 3(1)(ii) and 3(2) of the Maharashtra Control of Organized Crime Act,1999. Thus, the appeal is directed mainly as against acquittal of the accused under sec.3(1)(ii) and 3(2) of the Maharashtra Control of Organized Crime Act, 1999 and section 4 read with sec.25 of the Indian Arms Act. The learned Counsel appearing for the State submitted that acquittal of the respondent in respect of the above referred sections is unjustified and evidence on record shows that the accused/respondent has committed offence

as charged under the Arms Act and Maharashtra Control of Organised Crime Act,1999.

3. In order to demonstrate that the accused has committed an offence under Maharashtra Control of Organized Crime Act,1999 the prosecution has brought on record the record of crime Nos. 331 of 1991, 538 of 1991, 503 of 1992, 1 of 1997, 147 of 1999, 181 of 2000 and on that basis is tried to be submitted that the accused/respondent is the member of the organised crime syndicate and has indulged into unlawful activities with an object of gaining pecuniary benefits. On behalf of the respondent/accused none was present.

4. We have perused the record and evidence in the present matter. First crime which is registered is crime no.331 of 1991. It is a crime registered under sec.324 read with 34 of I.P.C. The allegation was that on 7th August, 1991, the respondent and one Aslam Shaikh and Rajendra Pardeshi were arrested on the allegation that they have assaulted one Datta Rajguru because Datta Rajguru was not joining the association formed by then accused. The second crime registered against the accused is

crime no.538 of 1991 for an offence punishable under sections 394, 427 read with 34 on the allegations made by one Jalaluddin that in the night of 18th December, 1991 when four persons entered into the shop of Jalaluddin having hockey sticks and assaulted him and took away the cash from the cash counter. Initially the name of the respondent was not disclosed and when the respondent was arrested when identification parade he was involved in the said offence. The third crime is crime no.503 of 1992 which was registered under sec.324 read with 34 of I.P.C. It was alleged in the said complaint that Sambhaji Waghmare, Anil Kamble and one Pappu Gaikwad were prosecuted because they assaulted the complainant Ismail and other witnesses. Crime no.1 of 1997 was the crime for which the accused was convicted. Crime no.147 of 1999 was registered for allegations that respondent went to the shop of Choudhari and made demand of money and gave threats to him and took away the cash of Rs.480/- Crime No.181 of 2000 was for an offence punishable under sec.392. It was registered on the basis of the complaint of one Shri Baban Thorpate against the respondent and one Yusuf Ansari. It was alleged that the

accused made demand of Rs.100/- from the complainant and on his refusal the complainant was assaulted and took away the cash of Rs.200/- from the pocket. Crime No.3267 of 2000 was registered under sec.506(2) of I.P.C. against the respondent along with one Pradeep and Sunil. Crime No.442 of 2000 was registered on the complaint of one Anil Londhe. However, the names of the offenders were not disclosed and it is the complaint against unknown persons. On perusal of this material it can only be said that as against the respondent there were several offences registered but surprisingly the prosecution has not examined any witness to show that in any of the offences there is a common gang or syndicate of persons continuously engaged in unlawful activities for a temporary gain and in some cases even the name of the respondent was not disclosed. In some cases he has been shown as accused on the basis of identification carried by the party. In one of the cases the object of crime was of non joining of the association formed by the accused/respondent but the very ingredients of offence under the provisions of the Maharashtra Control of Organised Crime

Act,1999 required for conviction under section 3(1)(ii) and 3(2) of the said Act have not been established by the prosecution and the Sessions Judge has rightly analysed the evidence and has concluded that offence has not been made out. We find no reason to interfere in the said finding.

5. Then the learned Counsel for the State made a feeble attempt to say that acquittal of the accused for offences punishable under sec.4 read with sec.25 of the Indian Arms Act is unjustified. However, the respondent was charged for the said offence since he was possessed of sickle but the sickle is the common article found with the persons and nothing has been shown that any permission under the Arms Act is necessary for possessing such sickle. Therefore, acquittal has been rightly recorded by the Sessions Judge and no interference is called for. Except this no other point was argued by the learned A.P.P. and, therefore, we do not find any substance in the appeal. The appeal is hereby dismissed.

(Smt.NISHITA MHATRE J.) **(S.B.MHASE J.)**